

APPEAL NO. 151841
FILED NOVEMBER 16, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 29, 2015, in Austin, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the employer made a bona fide offer of employment (BFOE) to the appellant (claimant); and (2) the claimant did not have disability from April 1 through April 9, 2015, but did have disability from April 10 through May 21, 2015, resulting from an injury sustained on (date of injury).

The claimant appealed the hearing officer's BFOE and disability determinations based on sufficiency of the evidence. The respondent (carrier) responded, urging affirmance. That portion of the hearing officer's disability determination that the claimant had disability from April 10 through May 21, 2015, resulting from an injury sustained on (date of injury), has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury. The claimant testified that he worked as a cook and that his job required him to stand, walk, and climb. The claimant testified that on (date of injury), he slipped and fell at work.

DISABILITY

That portion of the hearing officer's determination that the claimant did not have disability from April 1 through April 9, 2015, is supported by sufficient evidence and is affirmed.

BFOE

The hearing officer found that the BFOE dated April 2, 2015, complied with the requirements set forth in 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). Rule 129.6(c) sets out the requirements for a BFOE which provides:

(c) An employer's offer of modified duty shall be made to the employee in writing and in the form and manner prescribed by the [Texas Department

of Insurance, Division of Workers' Compensation]. A copy of the Work Status Report [DWC-73] on which the offer is being based shall be included with the offer as well as the following information:

- (1) the location at which the employee will be working;
- (2) the schedule the employee will be working;
- (3) the wages that the employee will be paid;
- (4) a description of the physical and time requirements that the position will entail; and
- (5) a statement that the employer will only assign tasks consistent with the employee's physical abilities, knowledge, and skills and will provide training if necessary.

In Appeals Panel Decision (APD) 010110-s, decided February 28, 2001, the Appeals Panel noted that the language in Rule 129.6 is "clear and unambiguous" and that the rule "contains no exceptions for failing to strictly comply with its requirements." In evidence is the employer's BFOE dated April 2, 2015, which states in part the following: "Your work schedule will be as follows: Full-time; 30 hrs a week/5 days a week." In this case, the letter fails to comply with the requirement of Rule 129.6(c)(2) because it does not disclose the specific days the claimant is scheduled to work or time the claimant is scheduled to start and end each work day. This case is similar to APD 022689, decided November 25, 2002, where the Appeals Panel noted that the employer did not tender a BFOE complying with the requirement of Rule 129.6(c) because the letter failed in part to disclose the days the claimant was scheduled to work, although the hours were noted.

Consequently, the hearing officer's determination that the employer made a BFOE to the claimant is wrong as a matter of law because the employer did not disclose the days and time the claimant was scheduled to work. We reverse the hearing officer's determination that the employer made a BFOE to the claimant and we render a new decision that the employer did not make a BFOE to the claimant.

The true corporate name of the insurance carrier is **TRUMBULL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge